

EXHIBIT 1

INTRODUCTION

Respondent, Elihu Harris, was the Mayor of Oakland for eight years, from 1991 to 1999. As a public official, Respondent was prohibited by Government Code Section 87100 of the Political Reform Act (the “Act”)¹ from making, participating in making, or using his official position to influence any governmental decision in which he knew or should have known that he had a financial interest.

In this matter, Respondent appointed, and voted to confirm the appointment of, his spouse to the Oakland Port Commission. By doing so, Respondent made two governmental decisions, in which he knew or reasonably should have known that he had a financial interest.

For purposes of this Stipulation, Respondent’s violation is stated as follows:

COUNT 1: On or about July 14, 1998, Respondent, Elihu Harris, as Mayor of Oakland, was a public official who made a governmental decision in which he knew or reasonably should have known that he had a financial interest, by appointing his spouse to the Oakland Port Commission, in violation of Section 87100.

SUMMARY OF THE LAW

A finding upon which the Act is based is that public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. (Section 81001, subd. (b).) Accordingly, one of the stated purposes of the Act is that the assets and income of public officials, which may be materially affected by their official actions, be disclosed, and in appropriate circumstances, that the officials disqualify themselves from acting, so that conflicts of interest may be avoided. (Section 81002, subd. (c).)

In order to accomplish this purpose, Section 87100 prohibits state and local public officials from making, participating in making or using their official position to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Section 82048 defines a “public official” as every member, officer, employee or consultant of a state or local government agency. Under Regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official, acting within the authority of his or her office votes on a matter, or appoints a person.

Section 87103 provides that a public official has a “financial interest” in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at Title 2, California Code of Regulations, sections 18109 through 18997. All regulatory references are to Title 2, Division 6, of the California Code of Regulations.

effect on the public generally, on the official, or on a member of his or her immediate family. As defined in Section 82029, an official's "immediate family" includes his or her spouse and dependent children.

Regulation 18702.1, subdivision (a)(4), as it was in effect in July 1998, provides that, for purposes of Section 87103, the effect of a governmental decision on an official's spouse is material if the decision will increase or decrease the spouse's personal expenses, income, assets, or liabilities by \$250 or more in any 12-month period. Section 82030, subdivision (a), defines "income" to include reimbursement for expenses and per diem.

Government Code section 82030, subdivision (b)(2), excludes from the definition of "income," reimbursement for expenses or per diem received from a local government agency. Regulation 18702.1, subdivision (c), as it was in effect in July 1998, interprets the "government income exception" in Section 82030, subdivision (b)(2), and provides that an official does not have a financial interest in a decision if the decision merely affects the salary, per diem, or reimbursement for expenses that the official's spouse receives from a state or local government agency. This exception, however, does not permit a public official to make a governmental decision to hire, fire, promote, demote, or discipline the official's spouse, if it is reasonably foreseeable that the decision will have a personal financial effect on the spouse. (Regulation 18702.1, subd. (c).)

SUMMARY OF THE FACTS

Respondent, Elihu Harris, was the Mayor of Oakland for eight years, from 1991 to 1999. As Mayor, Respondent was prohibited from making a governmental decision if it was reasonably foreseeable that the decision would have a material financial effect on himself or a member of his immediate family. During his last year in office, Respondent appointed his spouse, Kathy Neal, to an unsalaried position on the Oakland Port Commission, and voted with the Oakland City Council to confirm the appointment.

Ms. Neal served on the Oakland Port Commission for two years, from July 1998 to April 2000. During her tenure, Ms. Neal received reimbursement for her travel expenses, a membership to a dinner club, and a pre-calculated car allowance. The following table describes the non-salary income that Ms. Neal received during her first year as a port commissioner:

Month	Reason for Payment	Amount
Aug '98	Club Membership/Car Allowance	\$162
Sept '98	Club Membership/Car Allowance	\$162
Oct '98	Club Membership/Car Allowance	\$162
Nov '98	Club Membership/Car Allowance Reimbursement for Travel Expenses	\$162 \$3516
Dec '98	Club Membership/Car Allowance	\$162
Jan '99	Club Membership/Car Allowance	\$162
Feb '99	Club Membership/Car Allowance	\$162

Mar '99	Club Membership/Car Allowance	\$162
Apr '99	Club Membership/Car Allowance	\$162
	Reimbursement for Travel Expenses	\$943
May '99	Club Membership/Car Allowance	\$162
June '99	Club Membership/Car Allowance	\$162
	Reimbursement for Travel Expenses	\$489
July '99	Club Membership/Car Allowance	\$162
Total		\$6892

As a port commissioner, Ms. Neal received payments and reimbursements totaling \$6892 during her first 12 months in office. Ms. Neal received these payments and reimbursements in accordance with the policies and procedures of the Oakland Port Commission that were in effect at the time of her appointment. It was therefore reasonably foreseeable that the decision to appoint Ms. Neal to the Oakland Port Commission would have the material financial effect of increasing her personal income by at least \$250 in a 12-month period. As such, Respondent was prohibited from making that decision. By appointing his spouse to the Oakland Port Commission, Respondent violated Section 87100.

However, prior to making the appointment, Respondent consulted the Oakland's City Attorney's Office about whether he could make the appointment. The Oakland City Attorney's Office advised Respondent that he did not have a conflict of interest under the Political Reform Act in the decision to appoint Ms. Neal to the Commission. That advice was based on the fact that under the Oakland City Charter, a Port Commissioner receives "no salary or compensation." (Oakland Charter §701.) In addition, Respondent did not believe a conflict existed because, at the time, he was separated (but not legally separated) from Ms. Neal.

CONCLUSION

The matter consists of one count, which carries a possible penalty of Two Thousand Dollars (\$2,000), and which the parties agree is the appropriate penalty in this case.